THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM B. JOHNSON and LUKE E. FONTENOT

Appeal No. 95-2153
Application No. 08/171,007[1]

ON BRIEF

Before WINTERS, CAROFF and WILLIAM F. SMITH, Administrative Patent Judges.

WINTERS, Administrative Patent Judge.

DECISION ON APPEAL

---

[1] Application for patent filed December 21, 1993. According to appellants, this application is a continuation-in-part of Application No. 07/897,309, filed June 11, 1992, now abandoned.

This appeal was taken from the examiner's decision rejecting claims 1 through 15, which are all the claims in this application.

Claims 1 and 14, which are illustrative of the subject matter on appeal, read as follows:

1. A process for producing acidic aqueous solutions of melamine-aldehyde polymer containing reduced levels of free aldehyde, which comprises adding hydrogen peroxide to the melamine and aldehyde reaction product under pH conditions of between 1.0 and 2.5.

14. An acidic aqueous solution of melamine-aldehyde polymer containing free aldehyde levels below 0.1% by weight produced by a method as claimed in claim 1.

The references relied on by the examiner are:

Ross et al. (Ross)	3,148,937	Sept. 15, 1964
Murchison et al. (Murchison)	3,819,516	June 25, 1974
Hendrix et al. (Hendrix)	4,447,241	May 8, 1984

The issue presented for review is whether the examiner erred in rejecting claims 1 through 15 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Ross, Hendrix, and Murchison.

DISCUSSION

We shall not sustain this rejection.

In setting forth the rejection under 35 U.S.C. § 103, the examiner relies on Ross' disclosure of a treating solution for

cellulosic fibers and on a process for producing that solution. Specifically, the examiner refers to Ross' disclosure of an aqueous solution containing melamine-aldehyde resin, an acidic catalyst, and hydrogen peroxide. See Ross, column 2, lines 4 through 23. The examiner acknowledges that there is a difference between the process disclosed by Ross and the claimed process, namely, that Ross does not disclose "pH conditions of between 1.0 and 2.5" recited in the claims before us. As stated in the Examiner's Answer, page 4, last paragraph, "the prior art [Ross] does not disclose the pH [recited in the claims]." Nevertheless, the examiner would make up that deficiency in Ross by relying on (1) the pH conditions used in the traditional production of melamine-formaldehyde resins, described in the specification, paragraph bridging pages 5 through 7; and (2) the pH conditions disclosed by Murchison. We disagree with the examiner's reasoning.

First, melamine-formaldehyde resin is usually made by dissolving melamine powder in aqueous formaldehyde, and combining that mixture with a dilute acid solution (specification, page 5, lines 16 and 17). In the traditional

production of melamine-formaldehyde resins, the pH of the reaction product is generally in the range of 1.0 to 2.5 (specification, page 6, lines 5 through 7). In the traditional production of melamine-formaldehyde resins, however, the dilute acid solution serves a different function compared with the acidic catalyst disclosed by Ross. As Ross explains, the latter component is a curing agent which promotes the curing reaction of the nitrogeneous (melamine-aldehyde) resin with cellulose hydroxy groups present in the treated fibers (Ross, column 1, line 29; column 2, lines 49 through 53; column 6, line 37). On this record, the examiner has not established why it would have been obvious to carry out Ross' process for producing a treating solution for cellulosic fibers under pH conditions between 1.0 and 2.5 merely because, in the traditional production of melamine-formaldehyde resins, the pH of the reaction product is generally in the range of 1.0 to 2.5. This aspect of the examiner's rejection amounts to a non-sequitur. Ross does not disclose the pH of his aqueous treating solution, and the examiner errs by attributing the same pH value to that solution which is disclosed in appellants' specification, page

6, lines 6 and 7, in describing the traditional production of melamine-formaldehyde resins.

Second, with respect to the Murchison patent, we find that Murchison does not disclose or suggest using hydrogen peroxide. Nor does Murchison disclose or suggest melamine-aldehyde resins. All in all, we believe that Murchison bears little relationship to the instant claims or to the Ross patent. We therefore find that the combination of Ross, Hendrix, and Murchison is improper and would not have led a person having ordinary skill in the art to the claimed invention without the impermissible use of appellants' disclosure as a guide. The examiner relies on Murchison's disclosure of relatively low pH values in the context of treating aqueous solutions contaminated with soluble organic materials. However, it is impermissible within the framework of 35 U.S.C. § 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. In re Wesslau, 353 F.2d 238, 241, 147 USPQ 391, 393 (CCPA 1965).

As expressly recited in claims 1 through 13, appellants' process is carried out "under pH conditions of between 1.0 and 2.5." In our judgment, for the reasons already set forth, the cited prior art is insufficient to support a conclusion of obviousness of claims containing that limitation. Furthermore, as a matter of claim interpretation, we construe product claims 14 and 15 as defining an acidic aqueous solution which necessarily includes the characteristics recited in independent claims 1 and 7. That is, we construe product claims 14 and 15 as defining an acidic aqueous solution of melamine-aldehyde polymer containing free aldehyde levels below 0.1% by weight, produced by a method as claimed in claims 1 and 7 respectively, and having a pH of between 1.0 and 2.5. Again, the cited prior art is insufficient to support a conclusion of obviousness of claims containing that pH limitation.

One further point warrants attention. In the Examiner's Answer, page 7, last paragraph, the examiner states as follows:

> Hendrix clearly teaches in column 1, lines 54-57 that discoloration in the prior art products is due to the level of formaldehyde released during storage.

We disagree. The examiner's position to the contrary, notwithstanding, Hendrix does not teach that "discoloration in the prior art products is due to the level of formaldehyde released during storage." Rather, Hendrix discloses that various approaches have been proposed to reduce the levels of released formaldehyde from durable press treated fabrics. Although these prior approaches have been successful to varying degrees in lowering the level of released formaldehyde, nevertheless, other accompanying problems such as discoloration have made these approaches less than fully satisfactory. That is, the various approaches to reducing formaldehyde release, outlined by Hendrix in column 1, lines 45 through 53, have given rise to other problems, for example, discoloration. See Hendrix, column 1, lines 54 through 59.

The examiner's decision rejecting claims 1 through 15 on prior art grounds is reversed.

REVERSED

SHERMAN D. WINTERS)
Administrative Patent Judge)
)
)
)

MARC L. CAROFF Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
WILLIAM F. SMITH Administrative Patent Judge	)	

clm

Allen D. Darden
P.O. Box 4412
Baton Rouge, LA 70821-4412